EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE
CITY CRESCENT BUILDING
10 South Howard Street, Suite 3000
Baltimore, Maryland 21201

WALTER FLOURNOY CLASS AGENT v. SEAN O'KEEFE, ADMINISTRATOR NATIONAL AERONAUTICS & SPACE ADMINISTRATION AGENCY	)	EEOC CASE NO. 120-A2-1267X AGENCY CASE NO. NCN-92-GSFC-F064

DECISION GRANTING FINAL APPROVAL OF SETTLEMENT AGREEMENT AND ADMINISTRATIVE ORDER NO. 1

I. INTRODUCTION

This matter came before the Equal Employment Opportunity Commission ("EEOC" or "Commission") on a Joint Motion for Final Approval of Settlement Agreement and Administrative Order No. 1 filed by Class Agent Walter Flournoy and all others similarly situated ("the Class"), and NASA Goddard Space Flight Center ("NASA Goddard" or "GSFC"). The parties moved for final approval pursuant to 29 C.F.R. §1614.204(g)(4).

After almost a decade of litigation and mediation, the Class and NASA Goddard have submitted to the EEOC a settlement that they contend is fair, adequate and reasonable to the Class as a whole and that is the product of good faith, arms-length negotiations between the parties. Following vigorous advocacy and negotiations, the parties have agreed on a settlement that achieves the injunctive relief sought, in addition to significant monetary relief for one hundred twenty-four (124) current and former African American scientists and engineers of NASA Goddard who work or worked in GS-13 or GS-14 positions from April 7, 1991 to February 25, 2002.

II. FINDINGS OF FACT

Having considered the parties' joint motion and heard testimony during a Fairness Hearing that was held before the presiding Administrative Judge on July 8, 2002, I now make the following factual findings:

A. Litigation

This litigation originated on April 7, 1993, when Class Agent Walter Flournoy filed an administrative class complaint alleging racial discrimination against "all African American employees in scientific and/or engineering non-managerial positions at the GS-13 and GS-14 levels in Goddard Space Flight Center, NASA, who are evaluated for promotion to the GS-14 and GS-15 levels by the Manpower Utilization Review Council and who if at the GS-13 level have not been promoted to the GS-14 level and if at the GS-14 level have not been promoted to the GS-15 level," in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 *et seq.* ("Title VII").

NASA Headquarters forwarded the complaint to the EEOC for processing. Between May 1993 and March 1998, the parties litigated the issue of class certification. On March 3, 1998, the Commission's Office of Federal Operations (OFO) issued a decision provisionally certifying the Class and directing NASA Goddard's continued processing of the complaint. In April 1998, NASA Goddard requested reconsideration of the OFO decision. On October 19, 2000, OFO upheld its previous decision.

B. Negotiation and Mediation

In or about March 1998, the parties began attempts to resolve this matter without further litigation and hearing. In February 2001, the parties turned to mediation facilitated by Linda Singer, Esq. of ADR Associates, a leading authority in the field of alternative dispute resolution. Under Ms. Singer's facilitation, they engaged in intensive mediation over the course of approximately fourteen months, entailing ten (10) team sessions with GSFC management and Class Mediation Representatives, as well as multiple lawyers' negotiating sessions and almost daily counsel-mediator exchanges. The GSFC management team consisted of Dorothy Kerr, Esq., and Marleen Phillips, Esq., of the GSFC Chief Counsel's Office, Arthur F. Obenschain, Director, Applied Engineering & Technology Directorate ("AETD"), Jerry Simpson, Director, Office of Human Resources, Mary Kicza, former Associate Center Director, and though not in attendance, Al Diaz, Center Director. The Class was represented by Maia Caplan, Esq., and Jessica Parks, Esq., of Kator Parks and Weiser, PLLC, and by its Mediation Representatives, Class Agent Walter Flournoy, and Bill Weston, Pat McClain, Leroy Brown and Bill Reaves.

During the mediation process, the parties undertook substantial discovery, examination and analysis of personnel files and computerized databases. The parties each were assisted in their liability and damages analyses by nationally recognized statistical experts. Both parties also engaged in extensive preparatory sessions for meetings and counsel exchanges.

The mediation culminated in April 2002, when the parties agreed to end the litigation and executed the Settlement Agreement ("Settlement"). The Settlement, which consists of monetary and injunctive relief, together with Administrative Order No. 1, is currently before the presiding Administrative Judge on motion for final approval.

C. Summary of Settlement terms

The Settlement provides a wide range of injunctive and monetary relief, summarized below, which addresses employment issues that would have been litigated in this case absent the Settlement. While triggered by claims of race discrimination against a class of one hundred twenty-four (124) scientists and engineers, these measures are intended to benefit all NASA employees at Goddard by promoting fairness, consistency and objectivity in the administration of employment practices. No employee will be displaced from his or her job or from promotional opportunities as a result of any provisions of the Settlement.

Key features of the Settlement include:

- Appointment of Dr. Elaine Pulakos of PDRI, Inc., an independent neutral expert, to assist NASA Goddard in reviewing and redesigning its performance management system, including promotions and training, subject to review by Class Counsel and oversight by the Commission;

- Appointment of Edna Povitch of the Center for Dispute Settlement, an in dependent neutral mediation expert, to assist NASA Goddard in reviewing and redesigning its alternative dispute resolution procedures for informal discrimination charges;

- A minimum of ten (10) prospective promotions following a review of all currently employed Class Members;

- Twelve (12) retroactive promotion awards for retired or retirement eligible Class Members, which awards confer enhanced retirement annuities;

- A minimum of ten (10) opportunities for Class Members to participate in NASA Goddard's Accelerated Leadership Program, successful completion of which will result in an FPL of GS-14;

- "Make-whole relief" for back pay, interest and compensatory damages in the amount of two million, two hundred and eighty-six thousand, four hundred and fifty-nine dollars ($2,286,459.00), as determined by data on promotion rates by race to determine actual losses that

could be proven by the Class under prevailing law;

- Special service award payments to Mediation Representatives in the total amount of five hundred thousand dollars ($500,000);

- An automatic promotion for the Class Agent should he wish to remain at NASA Goddard, which promotion shall count against the minimum of ten (10) promotions to be awarded to current employee Class Members; and

- Monitoring of compliance with the Settlement through semi-annual reports of Class Counsel to the Commission, and continuing Commission jurisdiction over the parties and enforcement actions, if any, for a period of three (3) years.

D. Specific Settlement Terms

1. Class Definition

For settlement purposes, the Class is defined as:

All African American non-management, non-supervisory scientists and engineers at NASA Goddard in GS-13 and GS-14 positions who were eligible for and denied promotions to the GS-14 and GS-15 levels at any time from April 7, 1991 to February 25, 2002. Settlement Agreement at 11. The Settlement bars all claims of Settlement Class Members based on events that give rise to, or could give rise to, race discrimination claims relating to denial of promotional opportunities to the GS-14 or GS-15 levels during the liability period - commencing April 7, 1991 and ending February 25, 2002.

2. Settlement Term

The term of the Settlement is three (3) years, which may be extended only as provided in the Settlement or by order of the Commission if warranted under applicable law. During the three-year Settlement period, NASA Goddard will regularly meet with and report to Class Counsel about its compliance with Settlement obligations. If NASA Goddard fails to carry out any of its obligations, Class Counsel may bring an enforcement action following attempted voluntary resolution of the dispute.

3. Settlement Fund for the Class Agent and Class Members

The Settlement provides that NASA Goddard will make a deposit into the Settlement Fund to pay the claims of the Class Agent and Class Members for back pay, interest and compensatory damages, the contribution enhancements for Mediation Representatives, and

attorneys' fees and costs. Within thirty (30) days of Final Approval, NASA Goddard will deposit three million, seven hundred fifteen thousand, two hundred and seventy-eight dollars ($3,715,278.00) into the Settlement Fund. The Settlement Fund will be administered by Class Counsel pursuant to Administrative Order No. 1. Two million, two hundred eighty-six thousand, four hundred fifty nine dollars ($2,286,459.00), plus allocable interest and earnings, will be devoted to the settlement of the claims of Class Members, and will be entitled the "Claims Fund." Five hundred thousand dollars ($500,000), plus allocable interest and earnings, will be divided among the Mediation Representatives in recognition of their special contribution to the prosecution and mediation of the action, and will be entitled the "Contribution Fund." An additional nine hundred twenty-eight thousand, eight hundred and nineteen dollars ($928,819.00), plus allocable interest and earnings, shall be used to pay Class Counsel and Payees, as defined in section III.B.1 of the Settlement, for attorneys' fees and expenses for past services rendered. Prospective fees, such as for administration of the Settlement Fund, and monitoring (and if necessary enforcement) of NASA Goddard's performance of its duties under the Settlement over its term, are exclusive of this amount and shall be paid by NASA Goddard as set forth in section III.B.1 of the Settlement. No disbursements may be made from the Claims Fund to anyone without Commission review.

The allocation of monetary awards from the Claims Fund to the Class Agent and Class Members shall be based on the formula devised by the Class and set forth in Exhibit 5 of the Settlement Agreement. Under the formula, points are assigned based on numerous factors including length of service and performance. It is anticipated that Class Members will receive the majority of their monetary award within six months following Final Approval of the Settlement, although Administrative Order No. 1 permits Class Counsel to hold a portion of the awards for later distribution pending review of tax liability by the Internal Revenue Service.

4. Promotional Relief for Retirees and Retirement Eligible Class Members

Under the Settlement, twelve (12) promotion awards will be distributed to retired and retirement eligible Class Members who elect to retire, pursuant to the formula set forth in Exhibit 1 of the Settlement. Such awards are retroactive to five (5) years from the date of retirement, and consist of an initial award such that the Class Member's pay at the higher grade rate is the equivalent of a two-step increase in the grade from which he or she was promoted, plus the automatic steps that would have accrued within the five (5) years. Promotion award recipients under this section will receive back pay and compensatory damages pursuant only to the monetary formula as applied to the entirety of the Class, and will not receive them directly as a consequence of their promotion. Recipients will, however, directly receive enhanced back annuity

payments directly (following their contribution of the employee portion), as well as prospective annuity enhancements.

5. Promotion Review Process for Current Class Members and Others

The Settlement provides for a minimum of ten (10) promotion awards to current employee Class Members who are not eligible for retirement or elect not to retire. NASA Goddard will determine eligibility for promotion awards in accordance with the methodology set forth in Part III.C.2 of the Settlement, which provides that within thirty (30) days of Final Approval, Branch Heads will complete and forward promotion packages for all Class Members and provide them to the Director of AETD, who may consult with other Directors if necessary. The Director of AETD will complete his review of the promotion potential of each Class Member and notify such Class Member of the results within seventy-five (75) days of Final Approval. Class Members determined to be immediately ready for promotion shall be promoted within five (5) months of Final Approval or sixty (60) days after the Effective Date, whichever is later. Class Members who are determined to be ready for promotion within twelve (12) months of Final Approval will receive near-term concentrated training and work assignments that, if successfully completed, shall result in those Class Members being promoted within twelve (12) months of Final Approval or sixty (60) days after the Effective Date, whichever comes later.

The Settlement also provides that NASA Goddard will, within twelve (12) months of Final Approval, review all scientists and engineers at the GS-13 and GS-14 levels who are not Class Members and who have eight (8) or more years time-in-grade and promote those who merit promotion.

6. Review and Redesign of Performance Management System Process under Auspices of Independent Expert

Subject to the extension provisions of Part III.A.1.c of the Settlement, within one year of its Effective Date, Part III.A.2 of the Settlement provides that NASA Goddard produce and implement a revised and non-discriminatory performance management system. The performance management system encompasses all processes governing accretion and career ladder promotions, awards, training and performance appraisals. Dr. Elaine Pulakos of PDRI, Inc. will serve as an Independent Expert to provide consultation services and recommendations to NASA Goddard, and Class Counsel, during the review process. The revised system will provide for, but is not limited to, objective measures of performance, application of standards consistent with those promulgated by the Office of Personnel Management, standardized evaluations and assessment forms, feedback to employees including in the form of annual reviews, performance goals, an appeals process, supervisory accountability, and training for employees. Also, under the

revised process, no manager or supervisor of Class Members is eligible for promotion for a period of one-year following appraisal if he or she receives an unsatisfactory score on the new critical EEO element of their performance appraisal. Disagreements over the content and adequacy of the revised process, if any, are subject to Part IV of the Settlement, which addresses enforcement.

7. Review and Redesign of Alternative Dispute Resolution Processes for EEO Claims

Under Part III.A.5 of the Settlement, NASA Goddard, in conjunction with independent expert Edna Povitch of the Center for Dispute Settlement, will evaluate and redesign its alternative dispute resolution ("ADR") process for informal EEO disputes. Class Counsel will be apprized of the recommendations for reform, and have opportunity to consult with the independent expert.

8. Monitoring and Enforcement

Part IV of the Settlement sets forth multiple mechanisms for monitoring the parties' compliance with the Settlement over the course of its three (3) year term. Among them is the requirement that NASA Goddard's Associate Center Director and Class Counsel meet periodically - quarterly during the first year of the Settlement and biannually thereafter. If issues or disputes arise that mandate more immediate attention, the Settlement provides processes for informal negotiation between the parties, followed by mediation with ADR Associates, and, if necessary, for proceedings to enforce the provisions of the Settlement before the presiding Administrative Judge consistent with 29 C.F.R. §1614.504. The Settlement also provides for statistical data on promotions to be provided to Class Counsel for review on a biannual basis, in addition to other materials including surveys regarding Individual Development Plans, and the revised EEO ADR process. Finally, Class Counsel will annually file a written report with the presiding EEOC Administrative Judge concerning the Settlement's implementation.

E. Notice Preceding the Fairness Hearing

Notice of the Settlement, which summarized the Settlement terms, as well as the complete Settlement Agreement and Administrative Order No. 1, were sent via NASA Goddard to each Class Member either via electronic mail, if the Class Member was a current employee, or via certified mail to former NASA Goddard employees.

The Notice of the Settlement contained a concise summary of the Settlement terms. It also contained explicit instructions for filing comments on and/or objections to the Settlement within a period of one month. Finally, it provided contact information to Class Members of Class Counsel and the Claims Administrator in the event that a Class Member had questions.

Following distribution of the Notice of Settlement and Settlement, Class Counsel notified the Class that it would be holding, and on May 22nd held, an informational session on the Settlement terms on-site at GSFC. Class Counsel also spoke with several Class Members via telephone to answer questions. NASA Goddard's management team likewise held four "brown bag" lunches throughout May to present the Settlement terms to GSFC's larger community.

III. CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and the standard iterated below, I draw the following conclusions of law:

A. The Standard for Final Approval

Similar to Rule 23 of the Federal Rules of Civil Procedure, EEOC Regulations at 29 C.F.R. §1614.204 requires approval by the presiding Administrative Judge of a settlement of a class complaint. 29 C.F.R. §1614.204(g)(4). *Cf.* Fed. R. Civ. P. 23(e) (class actions "shall not be dismissed or compromised without the approval of the Court"). The standard of review for final approval is that the class settlement must be "fair, reasonable and adequate." 29 C.F.R. §1614.204(g)(4) ("If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class."). *Accord Burden v. Barnhart,* EEOC Case No. 120-99-6378X (2002). *C.f., Thomas v. Albright,* 139 F.3d 227, 231-33 (D.C. Cir.), *cert. denied,* 535 U.S. 1033 (1998); *Davis v. City and County of San Francisco,* 890 F.2d 1438, 1445 (9th Cir. 1989), *cert. denied,* 498 U.S. 897 (1990); *In re Nat'l Student Marketing Litigation,* 68 F.R.D. 151 (D.D.C. 1974).

To assess fairness and adequacy, courts examine a variety of factors including: whether the settlement is the result of arm's-length bargaining; the terms of the settlement vis-à-vis the strength of the complaint; the status of the litigation at the time of settlement; the reaction of the class; and the opinion of counsel. *In re Vitamins Antitrust Litig.,* 2000 U.S. Dist. LEXIS 8931 at *18 (D.D.C. Mar. 20, 2000); *Thomas,* 139 F.3d at 230-33; *Pigford v. Glickman,* 185 F.R.D. 82, 98-101 (D.D.C. 1999); *Burden,* EEOC Case No. 120-99-6378X at 7 n.4.

Further, courts generally conduct this review in the context of two broader principles. First, courts favor compromise to obviate the uncertainties of litigation and avoid wasteful expense. *Pfizer Inc. v. Lord,* 456 F.2d 532, 543 (8th Cir.), *cert. denied,* 40 U.S. 976 (1972); *Hammon v. Barry,* 752 F.Supp. 1087, 1100 (D.D.C. 1990) ("particularly in class action suits, there is an overriding public interest in favor of settlement"); *Osher v. SCA Realty,*

Inc., 945 F.Supp. 298, 304 (D.D.C. 1996) (preference for "resolution of disputes through voluntary compromise" is especially strong in class actions "given the expenses and judicial resources required"); *Luevano v. Campbell*, 93 F.R.D. 68, 85 (D.D.C. 1981) (noting "strong preference of Congress for encouraging voluntary settlement of employment discrimination claims"); *Cotton v. Hinton*, 559 F.2d 1326, 1330-31 (5th Cir. 1977) ("the policy favoring settlement is even stronger in view of the emphasis placed upon voluntary conciliation by the Act [Title VII] itself"). And second, courts must ensure that the interests of non-party class members are protected. *Pigford*, 185 F.R.D. at 98 (settlement must not be the product of collusion between the parties); *Thomas*, 139 F.3d at 231 (same).

It is not the function of the presiding judge during the fairness review to make ultimate determinations of law or fact on those issues underlying the dispute. *Grunin v. International House of Pancakes*, 513 F.2d 114, 123-24 (8th Cir. 1975); *In re Smith*, 926 F.2d 1027, 1028 (11th Cir. 1991); *Cotton*, 559 F.2d at 1330. Rather, considerable discretion is left to the parties to fashion a reasonable compromise. Manual for Complex Litigation, Second § 30.42 at 225 (1986). The "test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable." *In re Vitamins Antitrust Litig.*, 2000 U.S. Dist. LEXIS 8931 at *19 (D.D.C. Mar. 20, 2000). *Accord Pigford*, 185 F.R.D. at 103.

B. The Settlement Meets the Standards for Final Approval

As herein discussed, analysis of the record warrants approval of the Settlement.

1. The Settlement is Fair, Adequate and Reasonable

Examination of the Settlement and the circumstances surrounding its negotiation demonstrate that it is fair, adequate and reasonable.

a. There are Risks Attendant to Trial Without Countervailing Gains

Class Counsel investigated the Class claims and NASA Goddard's potential defenses and have concluded that the terms of the Settlement represent a good result for the Class. While the Class might have prevailed in this case had it gone to trial, such outcome is far from guaranteed. *E.g.*, *Ingram v. Coca-cola Company*, 200 F.R.D. 685, 689 (N.D. Ga. 2001) (reciting statistical success rates of employment discrimination claims). To approximate the relief provided in the Settlement, the Class would have had to prevail on pattern and practice liability, and the one hundred twenty-four (124) Class Members would have had to establish their

individual entitlement to damages. Had the Class proceeded and not prevailed in establishing pattern and practice liability, it would have been left with no relief. *Id.* As well, had the case proceeded in litigation, the Class would have been forced to defend provisional class certification against NASA Goddard's challenges. Courts are increasingly divided as to whether certification is appropriate where the class seeks not only back pay and injunctive relief, but compensatory damages as well. *E.g., Allison v. Citgo,* 151 F.3d 402 (5th Cir. 1998). Accordingly, resolution now obviates these risks to the Class, as well as the risk of additional substantial delay. *E.g., Hartman v. Powell,* Civ. No. 77-2019 (D.D.C. 2000) (two decade-long litigation against Department of State).

Equally as important, the relief accorded by the Settlement is unlikely to be substantially enhanced by further litigation. Both the Class and NASA Goddard employed statistical experts. While the parties disputed the extent of the statistical disparity in promotion rates - indeed whether the disparity was statistically significant or not - the parties were able eventually to reach a Settlement that approximates in relief to the Class the promotional shortfall calculated by its expert. The parties agreed that for purposes of settlement, the monetary relief under the Settlement would track the potential monetary losses including interest for the Class shortfall position. The Settlement Fund is also comprised of approximately ten thousand dollars ($10,000) per Class Member in compensatory damages. Given this, continued prosecution of the complaint would likely result in great delay, without any significant enhancement of benefits to the Class but with a great increase in risk of failure.

b. <u>The Stage of the Litigation is Advanced and Provides Ample Basis for Both Counsel to Evaluate Cases</u>

The Class Complaint was filed in April 1993, and has been the subject of almost ten years of litigation, including three (3) years of negotiation and almost a year and a half of intensive mediation. The time spent in litigation and mediation has given the parties abundant opportunity to familiarize themselves with the legal and factual issues. Through mediation, the parties expedited discovery of extensive computerized personnel data, and information concerning current and historic promotions and equal employment opportunity dispute resolution policies. This information is precisely the type that Class Counsel would ultimately have sought and relied on in the event of litigation and trial. Thus, counsel had more than sufficient information to evaluate their cases vis-à-vis settlement negotiations.

c. There Is Negligible Opposition to the Settlement

The Class is almost unanimously supportive of the Settlement. In response to the Notice provided to all Class Members via e-mail and certified mail, only one Class Member sent a letter objecting to the terms of the Settlement; that letter was from Mr. Flournoy. Class Agent Flournoy stated that under the Settlement he should have received a two-grade promotion award while remaining at NASA Goddard, as opposed to an automatic one-grade promotion if he remains employed or a projected two-grade promotion on retirement. While this argument has been considered, a "claim that individual dissenters are entitled to more [relief] is not, by itself, sufficient to reject the overall fairness of the settlement." *Thomas*, 139 F.3d at 232-33. *Accord Stewart v. Rubin*, 948 F.Supp. 1077, 1087 (D.D.C. 1996) (same), *aff'd*, 124 F.3d 1309 (D.C. Cir. 1997). This holds true even if it is the Class Agent who objects. *Id.* at 232; *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1077-78 (2d Cir. 1995) (affirming approval of settlement notwithstanding objections from four out of five named plaintiffs; "a contrary view would put too much power in a wishful thinker or a spite monger to thwart a result that is in the best interests of the [class]") (internal citations omitted); *Reed v. General Motors Corp.*, 703 F.2d 170, 174-75 (5th Cir. 1983) (same); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 & n.19 (4th Cir. 1976) (same).

As a result of the terms of the Settlement, Mr. Flournoy is the only Class Member guaranteed to receive an "automatic" promotion without condition of a supervisory review. He also is to receive $100,000 for his efforts in bringing and pursuing this case. In addition, he will receive, by formula, a sum of money from the Fund.

There are one hundred twenty-four (124) Class Members. Mr. Flournoy's objection to the Settlement equates to objections from less than one percent of the Class. This extraordinary lack of opposition unambiguously endorses the Settlement as fair, adequate and reasonable in the opinion of most Class Members. Mr. Flournoy's objection and quest for additional relief does not alter this result.

While it is permissible for a Class Agent to receive "incentive" payments owing to [his] increased risk of retaliation and for [his] services to the Class generally, *see supra* at 18, under the Settlement, the Class Agent is guaranteed $100,000 and a one-grade promotion if he remains at NASA Goddard, in addition to sharing equally in the Claims Fund pursuant to the monetary formula. This incentive payment adequately compensates Mr. Flournoy for his services.

As a result of the Settlement, if he elects to retire, he is likely to receive a two-grade, retroactive promotion. While Mr. Flournoy's disappointment is recognized, "inherent in compromise is a yielding of absolutes and an abandoning of highest hopes." *E.g., Stewart*, 948 F.Supp. at 1087. Mr. Flournoy stated at the hearing on July 8th that he believed that he was being retaliated against in the Settlement by not being given the same promotional advantage while staying that he would receive if retiring. However, the benefits to be received while remaining employed at NASA Goddard are substantial and do not reflect a retaliatory animus. They do reflect reward for over 47 years of Federal service and more that 30 years in grade. They do represent a remedy for having brought forward concerns, yet to be proven, that have caused major institutional benefits to the Agency and the workforce.

In addition, it is noted that Mr. Flournoy freely and without coercion signed the Settlement Agreement on April 24, 2002. Mr. Flournoy's objections are not persuasive that the Settlement is other than a fair, adequate and reasonable resolution of the above-captioned EEO Class Complaint.

d. Experienced Counsel for the Class and Agency Agree that the Settlement Is Fair, Reasonable and Adequate

In considering whether to approve a Settlement, courts defer to the judgment of experienced counsel "who have competently evaluated the strength of the proof" and assessed the risks, expense and delay of litigation. *Stewart*, 948 F. Supp. at 1087. After nearly ten years of litigation, counsel for the Class and NASA Goddard have concluded that this Settlement should be approved. They are sufficiently experienced to reach this determination. Class Counsel has extensive experience litigating employment discrimination complaints, including both federal and private sector class actions. In particular, Ms. Caplan, formerly a partner at the class action firm of Sprenger & Lang, specializes in class action litigation and has been involved in the litigation and resolution of multiple class actions, including: *Young v. Dreamworks*, No. BC 268838 (L.A. Sup. Ct. 2002), and related cases; *McLaurin v. Amtrak*, 98-CV-2019 (D.D.C.); *Thornton v. Amtrak*, 98-CV-0890 (D.D.C.); *Dyer v. Publix*, 97-2706-CIV-T-25E (M.D. Fla.); *Jones v. Ford Motor Co.*, 95-MD-1044 (E.D. Mich.); and *Martens v. 3M*, CO-98-2303 (Minn. Ct. App.). Ms. Parks was formerly Vice Chair, U.S. Merit Systems Protection Board. Their firm, Kator Parks & Weiser, has substantial experience representing federal employees in complaints of discrimination against their employers.

e. There Was No Collusion Between the Parties

After hearing statements from Ms. Singer, Ms. Kerr and Ms. Caplan, and given the nearly ten years of litigation and mediation, it is clear that the Settlement is the result of non-collusive and vigorous arms-length bargaining between NASA Goddard and the Class. Over the course of the litigation, the parties exchanged and rejected numerous proposals and counter-proposals, prior to arriving at this hard-fought Settlement.

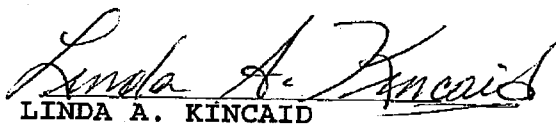
In addition, the amount of fees awarded to Class Counsel amounts to approximately twenty-five percent (25%) of the total monetary recovery (the estimated value of the entire Settlement package, including enhanced annuities and prospective pay raises, exceeds $3.71 million). This award is well within the parameters of reasonable fee awards, and as such, raises no inference of collusion. Furthermore, it is based on the contingency fee arrangement between counsel and the Class. *See In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995) (fee awards ranging from 19 to 45%).

Similarly, the contribution awards to the Mediation Representatives are of the type routinely approved given the enhanced risks taken by class representatives, and the work performed by them. *In re Dun & Bradstreet*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990); *Martens v. Smith Barney, Inc., Final Order and Judgment Approving Class Action Settlement and Dismissing Claims*, No. 96 Civ. 3779, 1998 WL 1661385, at *4 par. 28 (S.D.N.Y. July 28, 1998); *Burden v. Barnhart*, EEOC Case No. 120-99-6378X. Here, each of the Mediation Representatives, and particularly the Class Agent, spent a great deal of time, and was very active in advising Class Counsel in the prosecution and settlement of this case. In short, there is no evidence of collusion, and the presiding Administrative Judge is satisfied that the Settlement is the product of arms-length bargaining.

IV. CONCLUSION

For the foregoing reasons, I find that the Settlement is fair, adequate and reasonable to the Class as a whole. I find no basis for vacating the Settlement Agreement entered in this case. Consequently, I GRANT the parties' Joint Motion for Final Approval of the Settlement Agreement and attendant Administrative Order No. 1.

For the Commission on July 10, 2002:



LINDA A. KINCAID
ADMINISTRATIVE JUDGE